



WASHOE COUNTY REPUBLICAN CENTRAL COMMITTEE

Telephone 775-827-1900 • Fax 775-827-5040
Post Office Box 1886 • Reno, Nevada 89505-1886
washoe-county-gop.org • office@washoe-county-gop.org

FEDERAL ELECTION
COMMISSION

2012 MAY 29 AM 11:52

OFFICE OF GENERAL
COUNSEL

Mr. Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

MUR # 6583

May 24, 2012

COMPLAINT BEFORE THE FEDERAL ELECTION COMMISSION

The Washoe County Republican Party files this complaint seeking an immediate investigation into the Nevada State Democratic Party's ("NSDP") and Congresswoman Shelley Berkley's illegal spending practices.

Their communications show, and an investigation will confirm, that the NSDP and Congresswoman Berkley have distributed coordinated mail pieces that do not qualify as party exempt expenditures, yet are disclaimed as such. These mail pieces must be treated as contributions to Congresswoman Berkley's campaign. NSDP's mail pieces violate the Federal Election Campaign Act of 1971, as amended (the "Act"), 2 U.S.C. §§ 431 *et seq.* and Federal Election Commission ("FEC") regulations, 11 C.F.R. §§ 100.1 *et seq.*

FACTS

On or before May 24, 2012, NSDP mailed at least two mail pieces advocating for the election of Congresswoman Shelley Berkley to the U.S. Senate. True and correct copies of these mail pieces are attached hereto as Exhibits A and B.

Both mail pieces feature Congresswoman Berkley's campaign logo ("Shelley Berkley for U.S. Senate") and feature pictures of Congresswoman Berkley. Both mail pieces contain a paid-for disclaimer stating "Paid for By the Nevada State Democratic Party," use the NSDP's address for the return address, and feature the non-profit U.S. postage stamp indicating that the mailer took advantage of the NSDP's non-profit postal rate.

Congresswoman Berkley is not her party's nominated candidate. Nevada's Senate primary election will be held on June 12, 2012. Congresswoman Berkley has not

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just one, but four Democratic Party primary opponents; Steve Brown, Barry Ellsworth, Louis Macias and Nancy Price. Only after June 12 could Congresswoman Berkley be the Democratic Party's officially nominated candidate for the United States Senate.

LAW

State political party committees may make "party-exempt" mass mailings that expressly advocate for a nominated candidate, in full coordination with that candidate's campaign, without having to treat the costs related to that mailing as a contribution, so long as certain criteria are met. But such mass mailings, like all party-exempt activities, may only be executed "on behalf of [a] nominee"; or, *after* the primary election has occurred. 11 C.F.R. § 100.87; FEC AO 2008-06 ("Costs associated with the distribution of campaign materials on behalf of candidates running in the primary election are not [party-exempt activity].")

Costs related to a direct candidate support mail piece by a political party committee that is distributed before the date of the primary – including but not limited to production and mail cost – are regarded as contributions to that candidate, unless the mail piece is a party independent expenditure. See 11 C.F.R. § 100.52(d).

By definition, political party communications that republish campaign materials are coordinated communications. 11 C.F.R. § 109.37. One among many ways that the test for a party coordinated communication is met is if:

- (1) The communication is paid for by a political party committee or its agent;
- (2) The communication references a Senate candidate; and
- (3) The communication disseminates, distributes, or republishes campaign materials. 11 C.F.R. § 109.37.

Political party coordinated communications must be treated by the party committee making the payment as either an in-kind contribution for the purpose of influencing a Federal election to the candidate with whom it was coordinated; or as a coordinated party expenditure in connection with the general election campaign of the candidate with whom it was coordinated. 11 C.F.R. § 109.37(b).

Qualified political party committees may use the non-profit postal rate; candidate committees may not. Qualified party committees may not "delegate, or lend, the use of its permit to mail at special third-class rates to any other person, organization, or association." U.S. Postal Service Manual.

FEC regulations require different disclaimers for party independent, coordinated, standard, and party-exempt, communications. 11 C.F.R. § 110.11. "Paid-for-by" disclaimers are required on all political party public communications. *Id.*

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ANALYSIS

NSDP's mail pieces are disclaimed with only "Paid for by the Nevada State Democratic Party" as party-exempt activity mail pieces. By law, however, these mail pieces do not qualify as party-exempt activity, because they have been distributed before the Nevada Senate primary, which does not occur until June 12, 2012.

NSDP's mail pieces expressly advocate for Congresswoman Berkley, feature her in multiple pictures, and use the Berkley campaign's logo – a clear republication of campaign material. There is no question that these mail pieces qualify as party coordinated communications under 11 C.F.R. § 109.37. These mail pieces must be treated as either in-kind contributions to the Berkley campaign or as coordinated expenditures by the NSDP on behalf of their general election nominee.

Moreover, to the extent that the NSDP argues that these mail pieces are simply improperly-disclaimed coordinated mail pieces, this complaint serves as notice that these (and any others that NSDP has mailed) count against the NSDP's coordinated party expenditure limit. Should NSDP exceed its coordinated party expenditure limit by failing to count the costs of such mailings against their coordinated limit, continuing to make such expenditures without counting them against their coordinated limit, or both, that action would constitute a knowing and willful violation of the Act, and subject NSDP to potential criminal penalties.

Even if the NSDP's mail pieces did not constitute a party coordinated communication, they are clearly in-kind contributions to the Berkley campaign under 11 C.F.R. § 100.52(d). It is likely that the cost of the mailing has exceeded the NSDP's \$5,000 limit to Congresswoman Berkley's primary campaign.

Finally, the NSDP's mail pieces are improperly disclaimed. They state only that the pieces are "Paid for by the Nevada State Democratic Party." While this disclaimer is appropriate for a party-exempt mail piece, as discussed above, these mail pieces do not qualify as party-exempt. Coordinated, independent, and standard candidate support party communications each require different language, which is clearly set forth at 11 C.F.R. § 110.11.

CONCLUSION

The facts are clear: the NSDP, in likely coordination with Congresswoman Berkley, has violated Federal law.

On the basis of the foregoing, the Washoe County Republican Party respectfully requests that the FEC:

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- (1) Conduct an expedited investigation of the above to determine the exact amount of illegal spending and improper reporting by the NSDP;
- (2) Impose any and all penalties grounded in violations alleged in this complaint, or as otherwise deemed necessary by the Commission.

Respectfully submitted,

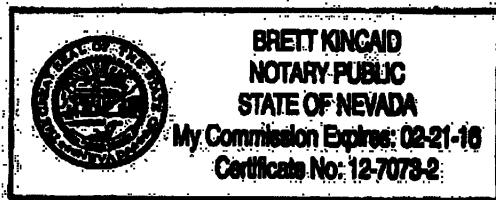
David C Buell, Chairman
Washoe County Republican Party

State: Nevada
County: Washoe

Subscribed and sworn before me this 24th day of May, 2012, by David C Buell,


Notary Public

My Commission Expires: 02-21-2016
Date



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WE SENT THEM THOUSANDS OF MILES
AWAY TO DEFEND OUR FREEDOM



But when they returned, Nevada veterans had to
drive hundreds of miles to get medical care.

1970

Daughter of a WWII Veteran

SHELLEY BERKLEY

Led The Fight To Get Nevada Veterans The Mc

Nevada is h
have bravi
Yet the majority o
to get the medica
It took the daughti
veterans hospital



Berkley pursues
veterans medical
center for valley

Bill seeks hospital, clinic and nursing home

New veterans medical center on horizon

By FRANK GUNTER

200 veterans that his staff is
pursuing a site in South Lake
as 10," he said. "There is no
reason we can't rebuild it."

MANASSAS, VA

Medical Care They Need Right Here In Nevada.

to more than 243,000 military veterans who served our country.

These veterans had to travel hundreds of miles where they needed.

If a World War II veteran to get Nevada, the state desperately needed.

Shelley Berkley led the effort to build a new VA Medical Center in Nevada. Her legislation paved the way for land and funding for the new Nevada hospital scheduled to open in August, allowing thousands of veterans to see doctors and get the health care they were promised right here in Nevada.

From construction workers to nurses, hundreds of Nevadans also have good jobs building the facility and providing the care our veterans deserve.

Shelley Berkley will always work to protect the brave veterans and their families who have sacrificed so much for all of us.

A new state-of-the-art VA Medical Center is under construction now and will be open this summer, the first new VA hospital built in the U.S. in 20 years.



VETERANS

VA hospital nearing completion



Shelley

BERKLEY

FOR U.S. SENATE

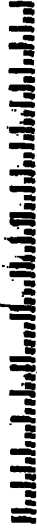
Democratic Party of Nevada
1210 S. Valley View Blvd., Suite 114
Las Vegas, NV 89102



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of Nevada

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Paid for by the Nevada State Democratic Party

Shelley Berkley's Long History Of Work On Behalf Of Nevada Military and Veterans

New VA Medical Center. Led the successful fight to build a new VA Medical Center in Nevada, the first VA hospital built in the U.S. in 20 years.

Justin's Law. Authored "Justin's Law" to expand and improve mental health services for veterans.

New GI Bill. Supported the new GI Bill that expanded educational benefits to veterans for the first time in 25 years.



Hiring Heroes Act. Co-sponsored the Hiring Heroes Act to provide job training to veterans transitioning back to civilian life, and also co-sponsored a new law to provide tax credits to businesses that hire disabled veterans.

Helping Homeless Vets. Fought back against cut to veterans' housing vouchers that prevented thousands of veterans from being homeless.

Helped Keep Hawthorne Open. Helped fight successfully to keep Hawthorne Army Depot off the base closure list, saving hundreds of jobs in northern Nevada.



Shelley
BERKLEY
FOR U.S. SENATE

Learn more about Shelley Berkley at: www.ShelleyBerkley.com

SHE'S BEEN A LEADER IN SUPPORTING OUR TROOPS



And when they return, Shelley Berkley Gets Our V

The daughter of a World War II veteran, Shelley Berkley understands the sacrifices made by our military and their families. That's why she's worked hard to provide them with the resources they need while serving, and the care and benefits they deserve when they return.

Keeping Hawthorne Army Depot Open

When the Base Closure Commission threatened to close the Hawthorne Army Depot and realign the 152nd Airlift Wing of the Nevada Air National Guard in northern Nevada, Berkley fought back. Her efforts helped reverse the decision and kept Hawthorne open, saving hundreds of jobs.

Up-To-Date Equipment To Protect Our Troops In Battle

Berkley supported funding to provide our troops with the latest equipment to protect their safety, including night vision goggles and special vehicles designed to reduce casualties from mines, explosive devices and ambushes in Iraq and Afghanistan.

First New VA Medical Center In 20 Years — Right Here In Nevada

Berkley led the successful effort to build a new VA medical center in Nevada, ensuring that the vast majority of Nevada's 243,000 military veterans would no longer have to travel hundreds of miles for the medical care they need.

Hiring Heroes Act

Berkley co-sponsored new laws to encourage businesses to hire veterans, direct tax credits to businesses that hire disabled veterans, and provide job training to veterans to ease their transition back into the workforce.

Hawthorne wins

REPRIEVE

BRAC panel marks town o

Berkley pursues
veterans medical
center for valley

200 beds hospital, clinic and nursing home

VA hospital nearing completion

Dr. Ann Aronson

The new Veterans Affairs Medical Center in

terans The Care They Deserve

40988

bill clarifies military funeral policy

WASHINGTON (UPI) — A bill clarifying military funeral policy and a will that his son had been was buried in California.

Berkley bill may boost veterans' spouse benefits

WASHINGTON (UPI) — A bill for veterans' spouses.

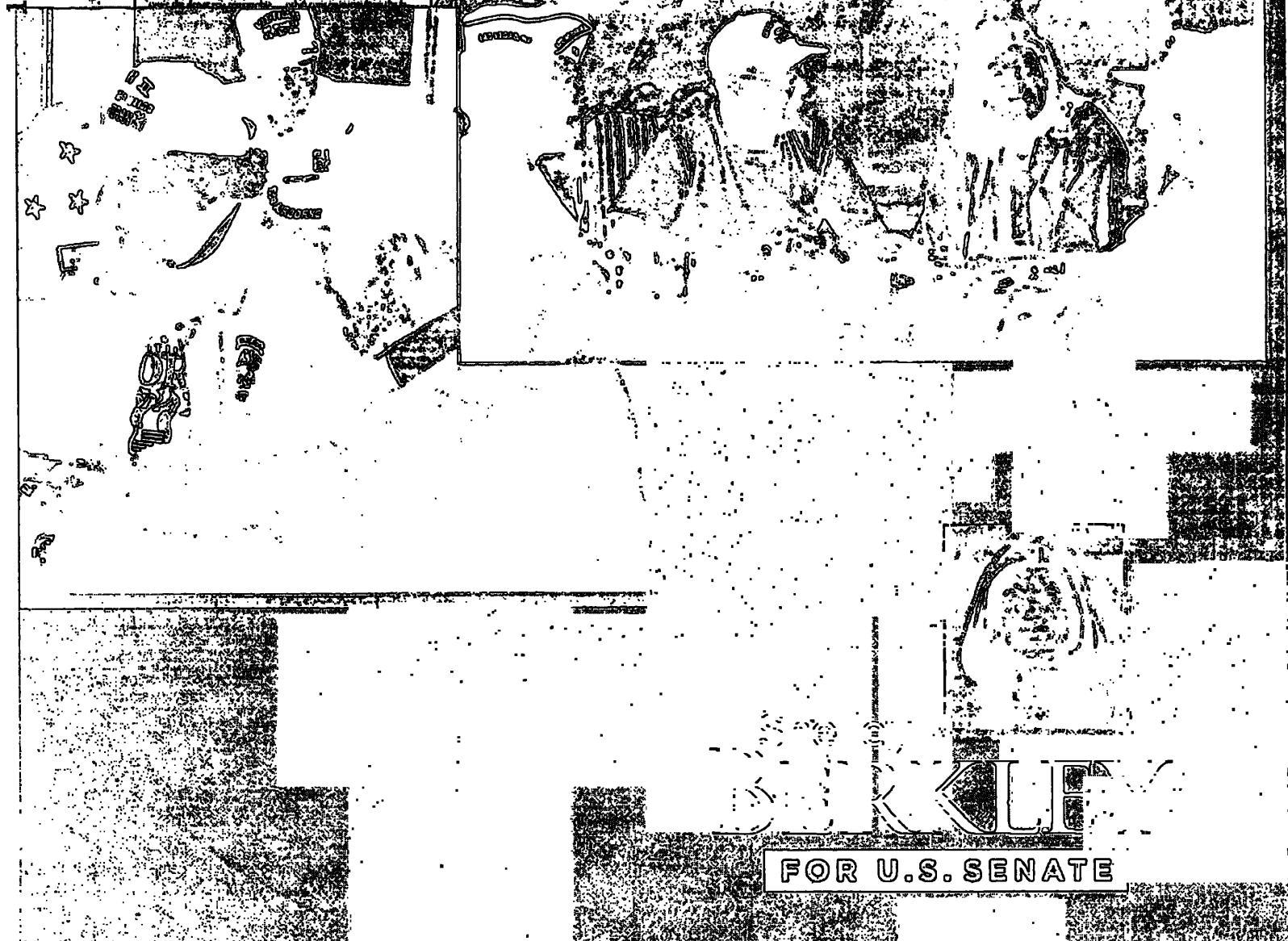
New veterans medical center on horizon

WASHINGTON (UPI) — A new veterans medical center is planned in the city of San Francisco. The center will be located in the city of San Francisco. The center will be located in the city of San Francisco.

Hawthorne/Commissioners base decisions on military value

WASHINGTON (UPI) — A bill for veterans' spouses. The bill is for veterans' spouses. The bill is for veterans' spouses.

More list



FOR U.S. SENATE

Democratic Party of Nevada
210 S. Valley View Blvd., Suite 114
Las Vegas, NV 89102



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of Nevada

Paid for by the Nevada State Democratic Party

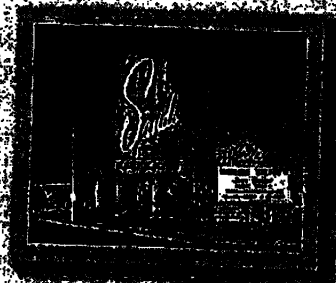
Daughter of a WWII Veteran

Shelley Berkley's Story Is Nevada's Story

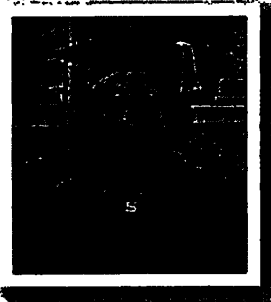


In 1963, Shelley's father, a World War II veteran, packed up the family and everything they owned and headed West in search of a better life.

Landing in Nevada, her Dad found a job as a waiter at the Sands Hotel and her family found a land of opportunity.



Shelley worked as a waitress and keno runner to help pay her way through school, becoming the first in her family to graduate from college. She raised two children of her own and became a University Regent overseeing Nevada's higher education system.



Today Shelley is a congresswoman fighting to make our state the land of opportunity for a thriving middle class once again, just as it was for her family so many years ago.

To learn more, visit:

www.shelleyberkley.com

(775) 525-0581

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